

TRACKWISE® EVALUATION LICENSE AGREEMENT

PLEASE READ ALL OF THE FOLLOWING TERMS CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE (DEFINED BELOW) AND/OR PURCHASING OR USING RELATED SPARTA SERVICES. THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN YOU ("COMPANY") AND SPARTA SYSTEMS, INC. ("SPARTA") STATING THE TERMS AND CONDITIONS THAT GOVERN COMPANY'S INSTALLATION AND USE OF THE SOFTWARE AND THE PURCHASE AND USE OF RELATED SPARTA SERVICES. BY SIGNING AN ORDER FORM WITH SPARTA THAT REFERENCES THIS AGREEMENT OR DOWNLOADING, INSTALLING AND/OR USING THE SOFTWARE AND/OR RELATED SPARTA SERVICES, COMPANY AGREES TO ALL OF THE TERMS OF THIS AGREEMENT. THE INDIVIDUAL ACTING ON BEHALF OF COMPANY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF COMPANY. IF COMPANY DOES NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE OR PURCHASE OR USE ANY RELATED SPARTA SERVICES. Sparta and Company are sometimes referred to herein individually as a "Party" and together as the "Parties".

Company wishes to evaluate certain Sparta software product(s) and Sparta is willing to grant a license for such evaluation on the terms and conditions set forth below.

1. **Definitions.** As used in this Agreement:

1.1. "**Affiliate**" means, with respect to either Party, any legal entity that directly or indirectly controls, is controlled by or is under common control with such Party, where "control" means (a) ownership of more than 50% of the equity of such Party or entity or (b) the power to direct or cause the direction of the management and policies of such Party or entity.

1.2. "**Consulting Services**" means the Software installation, configuration, support, assistance, technical account management and/or training services provided by Sparta, if any, that are specified in an Order Form.

1.3. "**Fees**" means the fees for Consulting Services specified in the Order Form and/or invoice.

1.4. "**Order Form**" means a mutually executed Order Form, prepared by Sparta, that references this Agreement and describes the Software licensed hereunder and the Consulting Services, if any, purchased by Company. For Consulting Services, the term "Order Form" includes the applicable SOW, if any. Each Order Form is hereby incorporated into and made a part of this Agreement.

1.5. "**Software**" means the object code version of Sparta's proprietary on-premise TrackWise computer software products, and of any third party software included in or provided by Sparta with any such TrackWise software products, to which Sparta grants an evaluation license(s) to Company under an Order Form (including any bug fixes and releases made available by Sparta to Company with respect thereto).

1.6. "**SOW**" means a statement of work for Consulting Services, signed by both Parties, setting forth the Consulting Services and deliverables, if any, to be performed by Sparta and the corresponding Fees to be paid by Company.

1.7. "**Term**" has the meaning specified in Section 4 (Term and Termination).

1.8. "**User**" means any individual natural human being (a) who is an active employee, consultant, contractor or agent of Company or of a Company Affiliate, (b) who is authorized by Company to use the Software solely on behalf of Company or a Company Affiliate for the Authorized Purpose (defined below) and (c) for whom Company has established a valid Software log-in account. Company shall be responsible for all acts and omissions of its Affiliates and Users, including any non-compliance by any of them with the terms of this Agreement (which shall constitute a breach of this Agreement by Company).

Also, as used herein, the term "including" means "including but not limited to", the term "shall" means "is required to" and the term "hereunder" means under this Agreement.

2. **Limited Evaluation License.**

2.1. **License Grant.** Subject to the terms and conditions of this Agreement and the Order Form, Sparta grants to Company, during the Term, a temporary, limited, personal, non-exclusive, revocable, non-transferable, non-assignable license to install (at the installation site specified in the Order Form) and use, and to permit its Affiliates and Users to use, one copy of the Software, in object code form only, and the related documentation ("**Documentation**") as provided or made available by Sparta to Company, (a) in a non-production environment only, (b) by up to the number and type of Users specified in the Order Form, (c) in accordance with this Agreement and the Documentation, and (d) solely for Company's and its Affiliates' internal evaluation for the purpose of determining whether to purchase Software licenses and related services from Sparta (the "**Authorized Purpose**"). Company shall not use or permit use of the Software for production or other commercial purposes under any circumstances whatsoever. References in this Agreement to "Software" include the Documentation.

2.2. **Restrictions.** Company shall not, and shall not attempt to (and shall not assist, enable or permit its Affiliates, Users or others to, or to attempt to), directly or indirectly: (a) modify, translate or adapt any Software or any portion thereof (unless and then only to the extent required to be permitted by applicable law); (b) rent, lease, share, lend, sell, resell, license,

sublicense, distribute or otherwise transfer any Software or any rights thereto, (c) provide any Software on a subscription basis, use or permit access to any Software by any third party (other than Company's Affiliates and Users as expressly permitted by this Agreement) or use any Software in connection with a service bureau or other configuration whereby any third party may access, use or benefit from any Software; (d) copy, duplicate or create any derivative works of or based on any Software; (e) reverse-engineer, decompile (except to the extent that decompilation cannot be prohibited or restricted by applicable law because it is essential in order to achieve interoperability with another software program, but only to such extent), disassemble or otherwise attempt to discern or derive the source code of any Software or underlying ideas or algorithms of any Software; (f) misappropriate any Software or any portion thereof; (g) access or use any Software or information provided pursuant to any Consulting Service to create a competing product or service; (h) actually or effectively circumvent any contractual usage or other limit, whether via automated means or otherwise; (i) bypass or disable any protections that may be put in place against unlicensed use of any Software, or otherwise gain access to or use any unauthorized portion of any Software; (j) disclose any benchmark tests relating to any Software; (k) remove, relocate, alter or obscure any trademark, copyright or other proprietary or restrictive marking or legend on any Software or other materials delivered or made available by Sparta to Company or any copies thereof; or (l) install the Software at any location other than the location specified in the Order Form. Company shall not take or permit any action that (i) creates any obligation with respect to the Software, including any obligation to disclose or distribute any of its source, object or executable code, or (ii) grants to any third party any rights to the Software. Company shall not use or permit use of any third party software included in or with the Software on a stand-alone basis or otherwise separated from the Software. As used in this Section, the term "Software" includes object and source code forms thereof.

2.3. Support Services. Sparta may at its sole discretion, but shall not be required to (except as described in a SOW), provide support services with respect to the Software.

2.4. Ownership. As between the Parties, Sparta or its applicable third party licensor retains and shall be the sole owner of all right, title and interest, including without limitation all copyrights, trademark, patent, trade secret rights and other intellectual property and proprietary rights, in and to the following (the following being collectively referred to as "**Sparta Property**"): (a) the Software (in object code and source code form), the Consulting Services and deliverables (if any), all other software, technology, content and materials provided or prepared by or on behalf of Sparta or used by Sparta in providing the Software, and all other Sparta Confidential Information (defined below); (b) any and all suggestions, ideas, enhancement requests, recommendations, modifications, improvements or other feedback provided by Company or its Affiliates or any of its or their employees, agents or contractors relating to any of the foregoing, all rights in which are hereby assigned to Sparta; and (c) any and all derivative works, customizations, enhancements, modifications, translations, extensions and improvements of or related to any of the foregoing. Company shall not register or attempt to register any patent or copyright which, in whole or in part, incorporates any Sparta Property. Except for the rights expressly granted herein, Sparta does not grant, license or transfer to Company or any User or other third party any ownership or other rights to any Sparta Property. No implied licenses are granted herein and all rights not expressly granted to Company herein are reserved by Sparta.

2.5. Open Source Software. Certain open source and free software components may be embedded or bundled with the Software. Such components are provided under the licenses that accompany such components.

2.6. Data Processing and Transfer. To the extent that Sparta processes any personal data originating from the European Economic Area and Switzerland ("**Restricted Personal Data**") in the course of delivering the Software and/or providing any Consulting Services to Company, any such processing shall be governed by Sparta's then current Data Processing Agreement (or such other agreement as Sparta may agree). Any and all transfers of Restricted Personal Data that are made to Sparta in the U.S. shall be governed by one or more of the following data transfer mechanisms (at Sparta's option): (a) binding contractual or other provisions, such as the controller-to-processor standard contractual clauses approved by the European Commission from time to time; (b) Sparta's certification to any program approved by a competent authority and permitting the transfer of Restricted Personal Data, such as binding corporate rules or any successor to the US-EU/US-Swiss Privacy Shield Framework; or (c) any other data transfer mechanism that is valid in the jurisdiction from which the Restricted Personal Data originates. For personal data originating from any other jurisdiction, Sparta's Privacy Policy located at <https://www.spartasystems.com/legal/privacy-policy> shall apply.

3. Consulting Services.

3.1. General. If applicable, Sparta will provide Company with the requisite hours of Consulting Services identified in an Order Form. Sparta will invoice Company on a monthly basis for any Consulting Services rendered and expenses incurred except as otherwise specified in the applicable Order Form. Company shall reimburse Sparta for actual and verifiable out-of-pocket expenses (including travel and related expenses), if any, reasonably incurred by Sparta in connection with any Consulting Services. Sparta may charge for travel time at 50% of the applicable rate when travel time exceeds four hours. Sparta shall not be responsible for any delay caused by Company or any third party under contract with Company. Company may delay Consulting Services by written notice to Sparta specifying the requested length of the delay (it being understood that the Parties will need to reschedule the Consulting Services at a mutually satisfactory time), provided that if Company delays upon less than two weeks prior written notice and Sparta is unable to reallocate the applicable Sparta personnel on a billable basis to another customer project (which Sparta will use reasonable efforts to do), then Sparta will invoice Company for any Consulting Services that are delayed by Company without such two week notice, at the applicable daily rate for such Consulting Services. Sparta hereby grants to Company a non-exclusive, non-transferable, non-assignable license to use the deliverables from the Consulting Services (if any) during the Term solely in connection with Company's licensed use of the Software hereunder and solely for the Authorized Purpose.

3.2. **Payment.** All Fees will be invoiced and paid in U.S. Dollars except as otherwise specified in the Order Form. Company shall remit payment to Sparta within 30 days of receipt of invoice. Additional payment terms may be set forth in the Order Form. All payments are non-refundable. Upon execution of any Order Form, if required for Company's internal financial controls, Company shall issue a valid purchase order for the Consulting Services set forth in such Order Form. Company's failure to issue such purchase order shall not relieve Company of its obligation to purchase and pay for such Consulting Services. All Fees are exclusive of all taxes and duties. If Sparta is required to pay or account for any sales, use, value added, withholding or other taxes, public fees, duties, deductions or other withholdings (collectively "Taxes"), then such Taxes shall be borne by Company. If Company is required to withhold or deduct any Tax from any payment due hereunder, Company will increase the sum payable to Sparta such that Sparta receives an amount equal to the sum it would have received had Company made no withholding or deduction. Taxes shall not include taxes based upon Sparta's income.

4. **Term and Termination.** (a) The term of this Agreement and the evaluation licenses granted hereunder shall begin on the "Order Start Date" and end on the "Order End Date" specified in the applicable Order Form unless earlier terminated in accordance with this Agreement ("**Term**"). Either Party may terminate this Agreement at any time upon 15 days prior written notice to the other Party. (b) Upon termination or expiration of this Agreement: (i) all Order Forms and all rights and licenses granted by Sparta hereunder and thereunder shall immediately terminate; (ii) Company shall, and shall cause all of its Affiliates and Users to, immediately cease all use of the Software; and (iii) each Party shall promptly return or destroy (and at the other Party's written request certify the destruction of) all Confidential Information of the other Party in its, its Affiliates' or any third party's possession or control, unless as of such termination or expiration the Parties have entered into a definitive license agreement for the Software that expressly supersedes this Agreement. All payment obligations of Company incurred, accrued or arising prior to the effective date of termination or expiration shall survive and be payable in accordance with the applicable payment terms herein. Sections 1, 2.2, 2.4, 2.6, 3.2, 4(b), 5, 6, 7 and 8 hereof shall survive termination or expiration of this Agreement.

5. **Confidentiality.**

5.1. **Confidential Information.** "**Confidential Information**" means any and all information disclosed or made accessible by or on behalf of one Party or its Affiliates to the other Party or its Affiliates (or any representative of any of them), whether orally, in writing or in any other form, which is either (a) marked or identified as "confidential" at the time of disclosure or (b) of a nature that a reasonable business person would understand, under the circumstances, to be confidential or proprietary provided that the disclosing Party generally treats it as confidential, including all technical, product, service, business, marketing, sales, financial and pricing information and data, techniques, methodologies, processes, algorithms, know-how, ideas, concepts, inventions, ideas, concepts, discoveries and trade secrets, including information of or about (including the identity of) employees, affiliates, customers, licensors, suppliers, subcontractors and representatives. The following is Sparta's Confidential Information whether or not marked or identified as such: (i) all Sparta Property; and (ii) Sparta's roadmaps, product plans, product designs, architecture, technology and technical information, and security audit reviews, however disclosed.

5.2. **Obligations.** Each Party shall: (a) treat as confidential and shall not disclose any Confidential Information of the other Party other than to its employees, Affiliates, contractors, consultants or advisors (each, a "Representative") who have a bona fide need-to-know such Confidential Information, provided that (i) such Representatives are bound by legally enforceable obligations consistent with and at least as restrictive as the provisions of this Section 5 and (ii) the receiving Party shall be responsible for any breach by its Representatives; (b) use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care; and (c) use the other Party's Confidential Information only for the purposes of this Agreement.

5.3. **Exceptions.** (a) Confidential Information shall not include: (i) any information that is or becomes generally available to the public (provided that such information did not become public as a result of the receiving Party's or its Representative's disclosure thereof in breach of this Agreement); (ii) any information received by the receiving Party without restriction on use or disclosure from sources other than the disclosing Party or its Representatives (provided that such source is not subject to a confidentiality obligation with regard to such information); (iii) any information that is independently developed by the receiving Party without use of or reference to Confidential Information of the other Party; or (iv) any information that was in the receiving Party's possession (without restriction on use or disclosure) prior to the time of its disclosure by or on behalf of the other Party. (b) Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party to any regulatory agency or court of competent jurisdiction if and to the extent: (i) approved by the other Party in advance and in writing; or (ii) required to comply with applicable law, regulatory agency or court order, provided that such Party provides prompt prior written notice of such required disclosure to the other Party (to the extent legally permitted) and reasonably cooperates with the other Party (at such other Party's cost and expense) to limit the extent of such disclosure.

6. **Disclaimer of Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

(a) THE SOFTWARE, AND ANY SERVICES PROVIDED BY SPARTA UNDER THIS AGREEMENT, ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND SPARTA MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER;

(b) SPARTA (FOR ITSELF AND ITS AFFILIATES, LICENSORS AND OTHER SUPPLIERS) EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS, INCLUDING ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OWNERSHIP, QUIET ENJOYMENT OR ARISING FROM A COURSE OF DEALING, USAGE OR

TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; AND

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SUBSECTIONS 6(a) AND 6(b), SPARTA DOES NOT WARRANT THAT THE SOFTWARE OR ANY SERVICES WILL PERFORM CONTINUOUSLY OR WITHOUT INTERRUPTION, BE ERROR FREE, MEET COMPANY'S OR ITS AFFILIATES' REQUIREMENTS, OR BE TIMELY OR SECURE, OR THAT DATA PROVIDED THROUGH THE SOFTWARE WILL BE ACCURATE, UP-TO-DATE, COMPLETE OR FREE OF HARMFUL COMPONENTS OR NOT LOST OR DAMAGED. COMPANY SHALL NOT MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF SPARTA TO ANY THIRD PARTY.

7. Liability.

7.1. SUBJECT TO SECTION 7.2, IN NO EVENT SHALL SPARTA (OR ITS AFFILIATES, LICENSORS OR OTHER SUPPLIERS) HAVE ANY LIABILITY FOR: (A) ANY DAMAGES FALLING WITHIN ANY OF THE FOLLOWING CATEGORIES: (I) LOST PROFITS; (II) LOST BUSINESS, REVENUES OR SAVINGS; (III) BUSINESS INTERRUPTION; (IV) LOSS OF GOODWILL; (V) LOSS OF ANTICIPATED SAVINGS; OR (VI) LOSS, CORRUPTION OR MODIFICATION OF DATA OR OTHER INFORMATION; OR (B) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER; IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDER FORMS), INCLUDING THE USE OF OR INABILITY TO USE THE SOFTWARE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAILURE OF AN EXCLUSIVE REMEDY; UNLESS AND EXCEPT TO THE EXTENT (Y) THE FOREGOING EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE SPARTA'S AND ITS AFFILIATES' MAXIMUM AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDER FORMS) SHALL NOT EXCEED \$1,000.00 OR (Z) COMPANY PURCHASES CONSULTING SERVICES FROM SPARTA, IN WHICH CASE SPARTA'S AND ITS AFFILIATES' MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH SUCH SERVICES SHALL NOT EXCEED THE AMOUNT PAID BY COMPANY FOR THE APPLICABLE CONSULTING SERVICES UNDER THE APPLICABLE ORDER FORM.

7.2. Nothing in this Agreement (including any Order Form) shall limit or exclude either Party's or its Affiliates' liability for (a) death or personal injury caused by its or their negligence or the negligence of its or their employees, agents or subcontractors, (b) fraud or fraudulent misrepresentation or (c) any other liability to the extent that it cannot be limited or excluded by applicable law.

8. General.

8.1. **Notices.** All notices under this Agreement must be in English, in writing and delivered in person or sent by certified or registered mail or internationally recognized express courier or overnight delivery service, and shall be deemed given upon personal, confirmed or documented delivery. All written notices or other written communications to Sparta shall be sent to it at 2000 Waterview Drive, Suite 300, Hamilton Township, New Jersey 08691 U.S.A., ATTENTION: LEGAL DEPARTMENT. All written notices to Company shall be sent to it at the primary address on file with Sparta.

8.2. **Independent Contractors.** The Parties are independent contractors. This Agreement (including the Order Forms) does not create any partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Sparta shall be solely responsible for the conduct and supervision of its personnel in the performance of its obligations hereunder. Neither Party shall have any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or to bind the other Party in any way whatsoever.

8.3. **Assignment.** Neither this Agreement nor any Order Form nor any right or obligation hereunder or thereunder may be assigned, transferred, delegated or subcontracted, by operation of law or otherwise, in whole or in part, by Company without Sparta's prior written consent. Subject to the foregoing, this Agreement (including the Order Forms) shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

8.4. **Trademarks, Publicity.** (a) Sparta and its licensors reserve all rights in and to their trademarks, trade names, service marks and logos (collectively "Marks") and no right to use, modify or reproduce such Marks are granted. Company agrees not to take or permit any action that may jeopardize the owner's rights in and to the Marks. Any and all uses of the Marks, or applications for or registrations of such Marks, shall inure to the benefit of Sparta or such licensors. (b) Neither Party may issue or make any press release, announcement or publication containing or otherwise use any of the other Party's Marks without the other Party's prior written approval.

8.5. **Compliance with Laws.** Company shall not, and shall not permit any of its Affiliates or Users to, access, use, export or re-export the Software in or to a U.S.-embargoed country or in violation of any applicable export law, regulation, order or sanction. Sparta represents that it is not named on any U.S. government denied-party list. Company represents that neither it nor any of its Affiliates nor any User is named on any U.S. government denied-party list. Company shall at all times comply and cause its Affiliates and Users to comply with all applicable laws and regulations in connection with this Agreement, including the United States' Foreign Corrupt Practices Act and the United Kingdom's Bribery Act 2010.

8.6. **Federal Government End Use Provisions.** The Software and any documents describing or relating to the Software are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" as those terms are defined by 48 CFR 2.101. The U.S. Government's use, duplication or disclosure of the Software as well as any documents describing or relating to the Software are subject to the terms and

conditions of this Agreement as provided for in 48 CFR 12.212, 12.216 and 227.7202-3. If the terms of this Agreement do not meet the U.S. Government's needs and/or are inconsistent in any respect with U.S. Federal law, the U.S. Government's cognizant Contracting Officer must negotiate a mutually acceptable written addendum to this Agreement specifically granting such additional rights to the U.S. Government and modifying this Agreement to be consistent with Federal law.

8.7. **Third Party Beneficiaries.** Company acknowledges that licensors of any third party software included in or with the Software are direct and intended third party beneficiaries of this Agreement and are entitled to enforce this Agreement directly against Company to protect their contractual, proprietary or other legal rights. In no event shall Sparta's licensors be deemed parties to this Agreement and neither Company nor any third party including Affiliates shall have a right to raise claims hereunder against such licensors. Subject to the foregoing, and except as otherwise provided in any transfer mechanism under Section 2.6 (Data Processing and Transfer), nothing in this Agreement shall be construed as giving any right, remedy or claim hereunder to any person or entity that is not a Party hereto, and any person or entity that is not a Party hereto shall have no right to enforce any part of it.

8.8. **Governing Law and Dispute Resolution.** (a) This Agreement (including the Order Forms and this Section 8.8) and any disputes, controversies or differences arising out of or in connection with this Agreement, including the breach hereof, shall be governed by the substantive laws of the State of New York applicable to agreements made and wholly performed in New York, without regard to the application of any conflicts of laws principles. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act is expressly excluded. (b) Any and all disputes, controversies or differences which may arise between the Parties out of or in connection with this Agreement, including the breach hereof, which cannot be amicably settled by negotiation between the Parties within 30 days from delivery of written notice of that dispute by one Party to the other Party, shall be finally determined by arbitration administered by the International Centre for Dispute Resolution (ICDR) in accordance with its International Arbitration Rules. The place of arbitration shall be New York, New York. All documents to be filed in the course of an arbitration shall be filed in the English language and all oral proceedings shall be conducted in the English language. Each Party shall bear its own costs of translation, without prejudice to a final determination on the allocation of costs. Each arbitration hearing shall be conducted in person except when specifically prohibited by applicable law or the International Arbitration Rules. Subject to Section 5.3(b), neither Party may disclose the existence, content or results of any arbitration hereunder (other than to its accountants and attorneys) without prior written consent of the other Party. Each Party shall cause its representatives, witnesses and any arbitrators to assume confidentiality obligations no less stringent than those provided in this Agreement, during and after the Term, with respect to the existence, content or results of any arbitration hereunder. Each Party shall be fully responsible for the observance of such confidentiality obligations by its representatives and witnesses during and after the Term. Each Party retains the right to apply to any court of competent jurisdiction at any time for provisional and/or conservatory relief, including prearbitral attachments or injunctions, to enforce the provisions of this Agreement protecting, and to otherwise protect, its Confidential Information and intellectual property rights, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

8.9. **Miscellaneous.** (a) This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. Each Party acknowledges that it in entering into this Agreement and the Order Forms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (including negligently or innocently made statements) by or on behalf of any person or entity (whether or not a Party) that is not expressly set out herein. (b) This Agreement and the Order Forms may not be amended or modified, nor any of its provisions waived, except by mutually signed written agreement. Any failure or delay to enforce or exercise any right or remedy shall not be deemed a waiver of such or any other right or remedy. Any waiver of any breach shall not be deemed to be a waiver of any other or subsequent breach. (c) If any court of competent jurisdiction holds any provision of this Agreement or any Order Form as null, void or otherwise ineffective or invalid, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remaining provisions shall remain in full force and effect and shall not be affected thereby. (d) Section headings in this Agreement are used solely for convenient reference and shall not be deemed to define or limit the provisions of this Agreement. The Parties drafted this Agreement without any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. (e) Any terms appearing on any purchase order, acknowledgment or confirmation that are different from or in addition to the terms of this Agreement or any Order Form shall not be binding on the Parties, even if signed and returned. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Order Form, the terms of this Agreement shall control. (f) Except as otherwise expressly provided in this Agreement, all remedies shall be cumulative and shall be in addition to every other remedy given in this Agreement or existing at law or in equity, by statute or otherwise. (g) Each Order Form may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute only one agreement. The execution and delivery of counterparts by electronic mail, electronic form (including execution by way of an electronic or other signature stamp ("E-signature")), website submission, facsimile or original manual signature, regardless of the means or any variation in pagination or appearance, shall be binding upon the Parties.